

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Proceeding by the Department on its own Motion to
Implement the Requirements of the Federal
Communications Commission's Triennial Review
Order Regarding Switching for Mass Market
Customers

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D.T.E. 03-60

COMMENTS OF
VERIZON MASSACHUSETTS

The FCC's *Triennial Review Order*¹ delegates to state commissions the power to rebut the FCC's nationwide findings of impairment or non-impairment for certain specific network elements, by determining, on a "granular" basis and in accordance with standards set by the FCC, that those findings do not apply to particular market areas, customer classes, customer locations, or transport routes. The Department opened this proceeding on August 26, 2003, to consider whether switching for mass market customers (*i.e.*, residential and small business customers) will continue to be offered as an unbundled element to competing carriers. *See Triennial Review Order* at ¶ 527. On September 9, 2003, the Hearing Officer issued a Procedural Memorandum stating that the

¹ *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket 01-338, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking (rel. August 21, 2003). For purposes of these comments, we will assume that the rules promulgated pursuant to the *Triennial Review Order* will go into effect as scheduled. However, these comments are submitted without prejudice to Verizon's position that numerous provisions of the *Order* are contrary to law, and should be stayed and vacated by the courts. Of course, if the

Department would also address loop and transport unbundling as well as hot-cut issues arising under the *Triennial Review Order*.

In its *Vote and Order Opening Proceeding*, the Department took the following actions: (1) required those interested in participating in the investigation to file requests to participate, stating with specificity their interest and the extent to which they would like to participate; (2) solicited comments on the scope, nature, and timing of any Department inquiry; and (3) scheduled a procedural conference in the docket for September 25, 2003. Verizon Massachusetts (“Verizon MA”) submits these brief comments in response to the Department’s Order.

I. THE DEPARTMENT MUST CONSIDER “GRANULAR” IMPAIRMENT ISSUES FOR LOCAL SWITCHING, TRANSPORT, AND LOOPS, CONSISTENT WITH THE FCC’S AUTHORIZATION.

The FCC has authorized state commissions to conduct “granular” impairment analyses for local switching, loops, and transport, to be completed within nine months of the October 2, 2003 effective date of the *Triennial Review Order* i.e., no later than July 2, 2004.² The specific matters to be reviewed during that period are the following:

Order is stayed to any extent, the procedures recommended in these comments may no longer be relevant.

² The effective date of the *Triennial Review Order* is 30 days after publication in the *Federal Register*. See 47 C.F.R. § 1.427(a) (“Any rule issued by the Commission will be made effective not less than 30 days from the time it is published in the Federal Register except as otherwise specified in paragraphs (b) and (c) of this section.”). Publication took place on September 2, 2003, and the 90-day period will thus tentatively begin on October 2, 2003. (The precise effective date is subject to approval by the Office of Management and Budget. See *Triennial Review Order* ¶¶ 780, 830.) Although the FCC’s rules are not yet in effect, we cite the text of the final rules that is provided in Appendix B to the *Triennial Review Order*. All of the cited rules will be codified in Part 51 of the FCC’s regulations; thus, for example, Rule 319(a)(4)(i) will be codified as 47 C.F.R. § 51.319(a)(4)(i).)

- ?? The FCC made a nationwide impairment finding for local circuit switching used to serve end-user customers using voice-grade or DS0-equivalent loop capacity (so-called “mass market” switching).³ However, state commissions are empowered to determine whether “requesting telecommunications carriers are not impaired in a particular market,” or whether, if impairment does exist in a particular market, it could be “cured by implementation of transitional unbundled local circuit switching in a given market and has implemented such transitional access” The rules also authorize review of the possibility of implementing a “batch” hot cut process to address certain FCC findings concerning operational impairment with respect to local switching.⁴
- ?? The FCC made a nationwide impairment finding for DS1, DS3, and dark fiber transport. However, state commissions are empowered to determine whether requesting telecommunications carriers are not impaired without access to unbundled DS1, DS3, or dark fiber transport along a particular route.⁵
- ?? The FCC made nationwide impairment findings for DS1, DS3, and dark fiber loops; however, state commissions are empowered to determine whether requesting telecommunications carriers are not impaired without access to these loop types at specific customer locations.⁶

In addition to this nine-month requirement for an initial determination on impairment issues, the *Triennial Review Order* also authorizes state commissions to make subsequent determinations within six months of the filing of a petition requesting such a determination. See Rules 319(a)(7) (loops); 319(d)(5)(2) (local switching); and 319(e)(4)(ii) (transport). The possibility that such petitions will be filed at some point does not impose any current requirements on the Department, and Verizon MA does not address such potential future proceedings in these comments.

³ In its review of switching for mass market customers, the Department must also determine the “cross over point where it makes sense for a multi-line customer to be served via a DS1 loop.” *Id.*, ¶ 497. “[A]bsent significant evidence to the contrary,” the appropriate cutoff in density zone 1 of the top 50 MSAs will be four lines. *Id.*

⁴ See Rule 319(d)(2). The nine-month requirement for this particular granular review is set forth in Rule 319(d)(5)(i).

⁵ See Rule 319(e)(1) (DS1); Rule 319(e)(2) (DS3); Rule 319(e)(3) (dark fiber). The nine-month requirement is set forth in Rule 319(e)(4)(i).

⁶ Rule 319(a)(4)(i) (DS1 loops); Rule 319(a)(5) (DS3 loops); Rule 319(a)(6) (dark fiber loops). The nine-month period for these determinations is set forth in Rule 319(a)(7)(i).

The Department has correctly identified the subject areas that it must address in this case in response to the *Triennial Review Order*. While there may be other issues that arise out of or relate in some way to the *Triennial Review Order*, these are, in general, not subject to the stringent nine-month time limit established in the FCC’s impairment rules, and thus should be considered separately and, if feasible, only after completion of the nine-month proceeding.⁷ A number of such issues will undoubtedly arise in the coming months and years, but a procedural plan for resolving them is not necessary at this time.⁸

II. THE SCOPE, NATURE AND TIMING OF ANY DEPARTMENT PROCEEDING ARE FRAMED BY THE TRIENNIAL REVIEW ORDER.

The scope, nature, and timing of the case are framed by the FCC’s *Triennial Review Order*. The FCC has established specific standards that the Department must consider in determining whether there is no impairment on a “granular” level for mass market local circuit switching, loops, and transport network elements. The first step in the analytical framework established by the FCC for mass market local switching; for DS1, DS3, and dark fiber transport; and for DS1, DS3, and dark fiber loops, is a

⁷ Many of these implementation issues will relate to conforming modifications to interconnection agreements. The timing of proceedings relating to such modifications, and indeed whether they are necessary at all, will depend in the first instance on the outcome of negotiations between the parties. *See generally Triennial Review Order* ¶¶ 700-706.

⁸ The Department should reject requests to institute proceedings whose purpose would be to unlawfully override unbundling determinations that the FCC has made, and as to which it has *not* delegated power to the states, such as its findings of non-impairment for OCn loops and transport, line sharing, Fiber-to-the-Home loops, and hybrid loops. *See Triennial Review Order* ¶¶ 315-318 (OCn loops), 285-97 (hybrid loops), 255-69 (line sharing), 273-84 (fiber to the home loops), 359 (OCn transport). For example, some CLECs have already asked other state commissions to address line-sharing issues in their *Triennial* proceedings. However, the FCC explicitly declined to reinstate its vacated line sharing rules and has established transitional and grandfathering rules, and there is thus nothing for the Department to address in this area. *See Id.*, ¶ 199 (“[S]ubject to a transition plan discussed below, we do not reinstate the Commission’s vacated line sharing rules because we determine that continued unbundled access to stand-alone copper loops and subloops

determination as to whether specified “trigger” conditions relating to the existence of competitive facilities are met. The triggers “provide bright-line rules to guide the state commission” and, as the FCC found, the “use of triggers keyed to objective criteria can avoid the delays caused by protracted proceedings and can minimize administrative burdens.” *Triennial Review Order* ¶ 498. If these triggers are satisfied, the Department must make a finding of no impairment, and the need for additional review will be sharply curtailed, if not eliminated.

Because trigger issues are conceptually simple, straightforward to resolve, and dispositive, it makes sense to address such issues first in this proceeding.⁹ As the FCC observed in the *Triennial Review Order*:

We adopt triggers as a *principal* mechanism for use by states in evaluating whether requesting carriers are in fact not impaired in a particular market. As noted above, we give substantial weight to actual commercial deployment of particular network elements by competing carriers. We find that the presence of facilities-based competitors is the best indicator that requesting carriers are not impaired. Therefore, our triggers identify existing examples of multiple competitive LECs using their own switches to serve mass market customers, or to provide a switching wholesale service. We require state commissions to find “no impairment” in a particular market when either trigger is satisfied, subject to the limitations described below. *The use of triggers keyed to objective criteria can avoid the delays caused by protracted proceedings and can minimize administrative burdens.*¹⁰

enables a requesting carrier to offer and recover its costs from all of the services that the loop supports, including broadband service.”).

⁹ The triggers that apply in these situations are defined in the FCC’s rules; *see* Rule 319(a)(4)(ii) (DS1 loops); Rule 319(a)(5)(i) (DS3 loops); Rule 319(a)(6)(i) (dark fiber loops); Rule 319(d)(2)(iii)(A) (mass market switching); Rule 319(e)(1)(ii) (DS1 transport); Rule 319(e)(2)(i) (DS3 transport); Rule 319(e)(3)(i) (dark fiber transport).

¹⁰ *Triennial Review Order* ¶ 498 (footnotes omitted; emphasis supplied).

To this end, the Department should initially determine the application of triggers. Then in a subsequent phase, to be instituted only if necessary, the Department can focus on the more open-ended analyses discussed in the *Triennial Review Order*, relating to “potential deployment” and economic provisioning.

The triggers must be applied on a market-specific basis, and the Department must, therefore, determine the relevant geographic markets for applying the triggers. While the Department has discretion in making this market determination, the market cannot be defined “as encompassing the entire state,” nor can it be defined “so narrowly that a competitor serving that market alone would not be able to take advantage of available scale and scope economies from serving a wider market.” *Triennial Review Order* ¶ 495. Instead, markets must be defined on a “granular” level, taking into account a number of factors set out by the FCC. *Id.* The Department should allow Verizon MA to propose geographic markets when it presents its analyses of triggers and develop a schedule for resolving the trigger case in an expeditious fashion.

In addition, in each of the markets in which it will evaluate impairment, the Department must either establish a batch hot-cut process or issue detailed findings explaining why such a batch hot-cut process is unnecessary. 47 C.F.R. § 51.319(d)(2)(i) & (ii). The examination of hot-cuts can start when the Department begins its examination of triggers but may take longer to complete than the simple trigger analysis.

In summary, the Department should proceed by initially determining the application of triggers, including the identification of relevant markets, followed if necessary, by consideration of the other criteria identified by the FCC with respect to that particular set of network elements. The Department’s consideration of hot-cut processes

can start when the trigger analysis starts but may extend beyond the Department's determination of triggers.

III. THE DEPARTMENT SHOULD ADOPT FLEXIBLE PROCESSES INCLUDING INITIATING ITS OWN DISCOVERY TO DEVELOP A COMPLETE RECORD.

In order to conduct the granular impairment analyses of triggers that the *Triennial Review Order* requires, the Department must determine the location and nature of competitive carrier facilities. Data about competitive facilities deployment can, of course, be provided most readily by the CLECs, since such data relates largely to the nature, type, size, and capabilities of facilities that the CLECs themselves own, use, or control. Because of the clear relevance to this proceeding of evidence of alternative facilities deployment, the Department itself should gather the relevant data from all carriers in Massachusetts, both for the Department's own use and for use by parties to this proceeding. Because of its regulatory powers over telecommunications companies providing intrastate services, the Department is in a far better position to collect this information on a rapid, complete and systematic basis than parties making use of the Department's discovery rules.¹¹

The Department should not, therefore, rely on the usual adjudicatory process, with party-driven adversarial discovery, to meet the need for collecting information relevant to the triggers. That process will lead to unnecessary procedural disputes and may not

¹¹ As it did in D.T.E. 99-271, the Department should adopt a protective order that allows parties to designate certain information as confidential. Much of the information central to the Department's determinations in the nine-month case is proprietary and competitively-sensitive data. Allowing parties to designate appropriate information as confidential will restrict access to competitively sensitive information and adequately protect it from misuse, while also providing the Department and participants with a full and fair opportunity to evaluate and comment on this information.

produce the data essential to the Department's determinations. As in the Section 271 proceeding (D.T.E. 99-271), the Department should tailor its procedures to ensure that it obtains all necessary, relevant information in an efficient and fair manner in order to make the requisite findings.

One such procedural mechanism – having all discovery to participants and non-participants issued through the Department – was suggested in the *Vote and Order Opening Proceeding*. Verizon MA concurs with that approach. Indeed, since the self-provisioning of network facilities by CLECs is a key factor that the Department must consider, it is in the best position to obtain such information from all carriers, even if some elect not to participate in the case. Likewise, the Department should use the hearings as its vehicle for obtaining facts or clarifying issues that it believes necessary to inform its determination. Thus, as in D.T.E. 99-271, the Department should reserve its right to limit participants' examination.

The Department should require all competing carriers in the State — regardless of whether a carrier has chosen to participate in the proceeding — to provide timely, full, and complete responses to the Department's questions. The Department should expressly inform carriers that they cannot avoid providing the data the Department seeks by declining to participate in the proceeding. Attached to this pleading is a proposed list of trigger-related questions that Verizon MA believes the Department should issue immediately. Timely and complete responses to these questions will not only provide the Department with much of the information it needs to make its trigger determinations, but

the Department-issued discovery will produce a more efficient and streamlined information gathering process.¹²

CONCLUSION

The scope, nature, and timing of the case have been established in the *Triennial Review Order*. The FCC has identified certain objective triggers relating to mass market local switching, loops, and transport that state commissions must examine in the granular impairment analysis required by the *Triennial Review Order*. The Department should determine the application of triggers first and move on, if necessary, to the other criteria identified by the FCC with respect to that particular set of network elements. During its consideration of triggers, the Department should also begin addressing hot-cut processes.

Respectfully submitted,

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¹² If proceedings continue past the trigger stage, the Department may wish to consider further Department-initiated information gathering.

**PROPOSED DEPARTMENT INFORMATION REQUESTS
RELATING TO COMPETITIVE FACILITIES**

Switching

1. Provide a list of all switches that you currently use to provide a qualifying service (as defined in 47 C.F.R. § 51.5, as that section will be amended by the Final Rules issued by the FCC pursuant to the *Triennial Review Order*) anywhere in Massachusetts, regardless of whether the switch itself is located in Massachusetts. Do not include Verizon Massachusetts switches utilized by you on an unbundled basis or through the resale of Verizon Massachusetts services at wholesale rates.
2. Identify each Verizon Massachusetts wire center district (*i.e.*, the territory served by a Verizon Massachusetts wire center) in which you provide qualifying service to any end user customers utilizing any of the switches identified in your response to Question 1. Wire centers should be identified by providing their name, address, and CLLI code.
3. For each ILEC wire center identified in response to Question 2, identify the total number of voice-grade equivalent lines you are providing to customers in that wire center from your switch(es) identified in response to Question 1. For purposes of this question, “voice-grade equivalent lines” should be defined consistent with the FCC’s use of the term. *See, e.g. FCC Form 477, Instructions for the Local Competition and Broadband Reporting Form.*
4. With respect to the voice-grade equivalent lines identified in response to Question 3, separately indicate the number being provided to (a) residential customers; (b) business customers to whom you provide only voice-grade or DS0 lines; and (c) business customers to whom you provide DS-1, ISDN-PRI, or other high capacity lines. For purposes of this question, “high capacity” means DS-1 or equivalent or higher capacity lines, including, but not limited to DS-1, ISDN-PRI, DS-3, OCn.
5. For each of the switches identified in your response to Question 1, state whether the switch is owned by you, or whether you have leased the switching capacity or otherwise obtained the right to use the switch on some non-ownership basis. If the facility is not owned by you, identify the entity owning the switch and (if different) the entity with which you entered into the lease or other arrangement, identify the nature of the arrangement, and state whether such entity or entities are affiliates of yours, in the sense defined in ¶ 408, footnote 1263 of the *Triennial Review Order*.
6. Provide a list of all switches from which you offer or provide switching capacity to another local service provider for use in providing qualifying service anywhere in Massachusetts.

Transport

1. Identify, by name, address, and CLLI code, each Verizon Massachusetts wire center (by the name, address, and CLLI code of that wire center) in which you have established a collocation arrangement or in which such arrangements have been ordered.
2. For each wire center identified in your response to Question 1, provide the number of arrangements by wire center, identify the transport facilities that currently serve such collocation arrangement (or that will serve such arrangement and that you are currently in the process of constructing, ordering, purchasing, or arranging for the use of). For purposes of this Question, “transport facilities” (a) does not include unbundled facilities obtained from Verizon Massachusetts, and (b) does include dark fiber.
3. For each transport facility identified in the response to Question 2, identify the transport technology utilized (*e.g.*, fiber optic (specify whether dark or lit), microwave, radio, or coaxial cable), and the quantity/capacity of the facility deployed.
4. For each wire center and transport technology identified in the responses to Questions 1-3, identify the type of termination equipment utilized in the collocation arrangement.
5. For each transport facility identified in your response to Question 2, state whether the facility is owned by you or whether you acquired rights to utilize it under a lease or other some other form of non-ownership arrangement. (If the facility was provisioned through the use of dark fiber that you acquired and subsequently “lit,” answer separately for the fiber and the optronics utilized.) If the facility is not owned by you, identify the entity that owns the facility and (if different) the entity with which you entered into the lease or other arrangement, identify the nature of the arrangement, and state whether such entity or entities are affiliates of yours, in the sense defined in ¶ 408, footnote 1263 of the *Triennial Review Order*.
6. Identify and describe any arrangements into which you have entered with another entity for such other entity’s use of transport facilities that you own or control, on a lease or other basis.

High-Capacity Loops (DS-1 or greater)

1. Provide a list of the customer locations to which you have deployed your own high-capacity (DS1, DS3, or dark fiber) loop facilities or are in the process of deploying such facilities, including the address of each location. For each such location, identify the capacity and nature of the loop facilities.